

Army Reduction in Forces & the Effect on Military Administrative Issues in accordance with Army Regulation (AR) 27-3

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Disclaimer:

Individual capacity

Not speaking on behalf of the DOD, Army, JAG Corps, XVIII Airborne Corps or Legal Assistance (anywhere)

Agenda

Sequestration...the numbers
AR 27-3
Military administrative issues
New additions
The way ahead...

Sequestration... the numbers

According to Wikipedia – sequestration is a result of the [Budget Control Act of 2011](#) (BCA), and was postponed by two months by the [American Taxpayer Relief Act of 2012](#) until March 1 when this law went into effect. *Wikipedia (Google)

The cuts were split evenly (by dollar amounts, *not* by percentages) between the defense and non-defense categories. Some major programs like [Social Security](#), [Medicaid](#), federal pensions and veteran's benefits are exempt. *Wikipedia (Google)

As of May 2015, the Army was down to 496,079 Soldiers. *Army Times, May 6, 2015

In July, the Army released the plan to reduce the force by another 40,000 Soldiers to approximately 450,000 Soldiers by the end of 2017/2018. *Military.com Daily News, July 9, 2015

If sequestration remains in effect, the active duty component will shed another 30,000 Soldiers and shrink to 420,000 beginning in 2019. *www.army.mil article, July 9, 2015

We have looked to civilians to provide continuity and “backfill” when the military are low (due to PCS, other reasons). We have already been through reductions in civilians and are looking at additional 17,000 in cuts to civilian workforce. *www.army.mil article, July 9, 2015

AR 27-3

MILITARY ADMINISTRATIVE MATTERS

Legal Assistance will be provided to clients on military administrative matters if required by law or Army regulation.

Legal Assistance and TDS attorneys share duties on military administrative matters.

Subject to USATDS mission requirements, TDS attorneys should ordinarily assist SM on actions that...

- (a) are initiated on the basis of alleged violations of the UCMJ
- (b) are related to impending, pending or recently completed UCMJ proceedings

The presence of either of these two factors turns a Legal Assistance case into a TDS case.

SJA (that is, legal assistance) cases:

LOD, AR 600-8-1 (required)	Security clearance revocations, AR 380-67 (required)
FLIPL, AR 735-5 (required)	Suspension of favorable personnel actions, AR 600-8-2 (optional)
OER, AR 623-105 (required)	Memoranda of reprimand, GOMOR, AR 600-67 (required)
NCOER, AR 623-205 (required)	Article 138, AR 27-10 (required)
Relief for Cause, AR 623-105 (required)	Inspector General investigations, AR 20-1 (required AD, optional civilians)
Bars to reenlistment, AR 601-280 (optional)	Correction of military records, AR 15-185 (required)
Waivers to allow reenlistment, AR 601-280 (optional)	
Other investigations, AR 15-6 (required)	

Expungement of military records, AR 600-37 (optional)	Medical evaluation boards, AR 40-3 (optional) – this has been tasked to the IDES
Hardship discharges, AR 635-200 (required)	Qualitative Management Program, AR 601-280 (optional)
Compassionate reassignments, AR 614-100 officers & AR 614-200 enlisted (required)	Officer unqualified resignations by reason of pregnancy, and resignations in lieu of discharge because of failure to meet statutory or regulatory requirements, AR 635-120 (required)
Physical evaluation boards, AR 635-40 (optional) – this has been tasked to the IDES	Military driving privileges, AR 190-5 (optional)
Flying evaluation boards, AR 600-105 (optional)	
Quality accreditation for doctors, AR 40-68 (optional)	

Military Administrative Issues

How are they cutting the Forces:

VOLUNTARY RETIREMENT	QMP (Enlisted)
MEDICAL BOARDS	◦ GOMOR/LOR
VOLUNTARY EARLY SEPARATION (UP TO 6 MONTHS FOR EMPLOYMENT)	◦ NCOER
◦ BARS TO REENLISTMENT (90 DAYS)	◦ UCMJ/15-6 INVESTIGATIONS
◦ PRECISION RETENTION (LIMITED BY ETS OR MOS)	OSB/ESERB (Officers)
◦ Employment /School	◦ Not in the Regulation but per Legal Assistance Policy Division
◦ Pregnancy or other Voluntary Chapter	◦ GOMOR/LOR
INVOLUNTARY CHAPTERS	◦ OER
UCMJ	◦ REDUCTION IN NUMBERS – BY YEAR GROUP, NOT CONDUCT RELATED

Qualitative Management Program

AR 635-200 – Active Duty Enlisted Administrative Separations

Identifies noncommissioned officers whose performance, conduct or potential for advancement do not meet Army standards for continued service, as determined by the approved recommendations of a centralized selection board responsible for QMP selection.

NCOs in the rank of SSG through CSM/SGM from the Regular Army and U. S. Army Reserve (Active Guard Reserve) may be subject to the QMP process except for those who:

- a. have an approved retirement;
- b. are previously retained on active duty by a QMP board (provided no new basis for QMP consideration is documented since the earlier retention determination);
- c. hold the rank of CSM/SGM and are within 2 years of the retention control point for their rank; or
- d. are promotable to the next higher grade, when the basis for QMP consideration was filed in the Soldier's records (HRC) and included in the official file seen by the promotion selection board for the next higher grade.

Considered for denial of service when NCO has:

Memorandum of reprimand from a general officer (GOMOR)

Conviction by court-martial or punishment under Article 15, UCMJ

Noncommissioned Officer Evaluation Report (NCOER) based on a "Relief for Cause," pursuant to AR 623-3, paragraph 3-55

Annotation of "NO" in part IV, block a, on DA Form 2166-8

Rating from the senior rater of 4 (fair) or 5 (poor) for overall performance or potential in part V, blocks c or d, on DA Form 2166-8

Service School Academic Evaluation Report indicating NCOES course failure

The DCS, G-1, or designee, approves a request from commanders with General Court Martial Convening Authority, or the Commander HRC, for referral of an NCO to a QMP screening board

Failure to be promoted within time period

Selection Criteria:

Moral or ethical conduct incompatible with the values of the NCO corps and the Army ethic

Lack of potential to perform NCO duties in current grade

Decline in the efficiency and performance over a continuing period, as indicated by an NCOER or failure of NCOES courses

Recent or continuing disciplinary problems, as evidences by conviction by court-martial, nonjudicial punishment, or administrative reprimand

Other discriminators such as imposition of a filed commander's bar to reenlistment, inability to meet physical fitness standards, and failure to comply with requirements of the Army body composition program.

Entitled to Legal Assistance for Rebuttals/Appeals

Officer Separation Board (OSB)

Elimination Actions – substandard performance, adverse or derogatory information or to reduce the force

Most officer elimination boards are handled by TDS; however, the OSB reduction in force is handled in Legal Assistance, with approval of Legal Assistance Policy Division.

OSB can be triggered by similar factors to QMP, but it can also be exclusively force reduction.

Entitled to Legal Assistance for Advice

Medical

Integrated Disability Evaluation System (IDES)

DOD and VA working together

- Medical Evaluation Board (MEB)
- Physical Evaluation Board (PEB)

DOD uses the IDES to determine a Service member's fitness for Duty

General Rule for Medical Processing

Soldiers subject to administrative separation who are determined by the MTF Commander to not meet medical retention standards will be referred to the Medical Evaluation Board

See AR 635-200, para 1-33b

Administrative Separation (Chapter) is an administrative action, and not punishment under the UCMJ

UCMJ is punishment

The General Court-Martial Convening Authority (GCMCA) determines whether to proceed with the administrative separation or through the Physical Disability System when UCMJ action has NOT been initiated and:

The Soldier's medical condition is the direct or substantial contributing cause of the conduct leading to the recommendation for the administrative separation; or

Other circumstances of the individual case warrant disability processing instead of further processing for administrative separation. AR 635-200, Ch.1-33, para. 1(a-b)

Bottom line, the CG makes the decision whether the Soldier will be separated through administrative separation (a Chapter), or continue through the IDES process and not be Chaptered

Be aware, Soldiers can still be Chaptered after the MEB stage and after he or she receives a rating

Medical or QMP (enlisted)

The QMP proceedings will continue, but final action by HRC will not be taken, pending the results of the MEB

HRC will suspend processing of the QMP action pending the PEB decision

If the soldier is found physically fit, the QMP action will be resumed

If the soldier is found physically unfit, the QMP action will be abated

Medical or OSB (Officer)

An officer currently undergoing an MEB/PEB (i.e. enrolled in the Integrated Disability Evaluation Systems or IDES) who is selected by the OSB/E-SERB board will still be notified of their selection. Their separation date will be the separation date established by the force shaping board.

When a Commissioned or Warrant Officer might be separated under Other Than Honorable Discharge (OTH) and has a medical impairment that does not meet medical retention standards, the Officer will be processed simultaneously for administrative separation and the Medical Evaluation and Physical Evaluation Boards

If the PEB results in a finding of physical unfitness, both the PEB action and the completed administrative separation action will be forwarded to the Secretary of the Army or his designee for determination of appropriate disposition regarding whether to approve an administrative discharge or discharge through the physical disability system

ABCMR
APPEALS

The way ahead...

DOING MORE WITH LESS

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